

RESOLUTION NO. R-84-83.

A RESOLUTION employing a legal adviser
to the Fort Wayne Common Council.

WHEREAS, the Common Council has received a letter
dated August 29, 1983, from the law firm of Shoaff,
Parker & Keegan thanking the Council for offering to
employ a member of that firm, David B. Keller, as its
legal adviser and requesting that any such employment
be subject to certain restrictions with regard to
Mr. Keller's advising Council with regard to matters
in which other members of said firm were appearing; and

WHEREAS, such request was a legitimate expression
of said law firm's concern that there be no impropriety
or appearance of impropriety in Mr. Keller's employment;
and

WHEREAS, the Common Council is likewise desirous
of avoiding any impropriety or appearance of impropriety;
and

WHEREAS, the Common Council has heretofore employed
Mr. Keller subject to such restrictions; and

WHEREAS, such action was taken at a committee session
on or about September 6, 1983, and was not memorialized.

NOW, THEREFORE, BE IT RESOLVED that the employment
of David B. Keller as legal adviser to the Fort Wayne
Common Council subject to certain restrictions be
and it hereby is ratified.

Ray A. W.

Samuel H. Talajko

John A. Burns

Janet L. Bradbury

John

Mark C. Gaudin

Victor S. Scruggs

R. J. Achorn

Edmund

Read the first time in full and on motion by _____,
seconded by _____, and duly adopted, read the second time
by title and referred to the Committee _____ (and the City
Plan Commission for recommendation) and Public Hearing to be held after
due legal notice, at the Council Chambers, City-County Building, Fort Wayne,
Indiana, on _____, the _____ day of
_____, 19____, at _____ o'clock _____.M., E.S.T.

DATE: _____

CITY CLERK

Read the third time in full and on motion by _____,
seconded by Mr. Gantz, and duly adopted, placed on its
passage. PASSED (~~LOST~~) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GiaQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 10-11-83.

Sandra E. Kennedy

CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,
Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL)

(APPROPRIATION) ORDINANCE (RESOLUTION) NO. B-84-83.
on the 11th day of October, 1983.

ATTEST:

(SEAL)

Sandra E. Kennedy

CITY CLERK

Ray A. E. Clark

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on
the 12th day of October, 1983, at the hour of
11:30 o'clock A..M., E.S.T.

Sandra E. Kennedy

CITY CLERK

Approved and signed by me this 18th day of October
1983, at the hour of 3 o'clock P..M., E.S.T.

Win Moses, Jr.

WIN MOSES, JR. - MAYOR

LAW OFFICES
SHOAFF, PARKER & KEEGAN

24TH FLOOR, FORT WAYNE NATIONAL BANK BUILDING

P.O. BOX 127D9

FORT WAYNE, INDIANA 46864

(219) 424-8000

ROBERT Y. KEEGAN
MACLYN T. PARKER
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CLIFFORD E. SIMON, JR.
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DAVID B. KELLER
GEORGE T. DODD
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RICHARD F. BAIRD, JR.
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JOHN D. SHOAFF
1908-1982

LOUIS F. NIEZER
OF COUNSEL

October 5, 1983

Mr. Ben A. Eisbart
President, Common Council
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, Indiana 46802

Dear Mr. Eisbart:

As stated in our letter of July 28, 1983, concerning the employment of our partner, David B. Keller, as Attorney for the Common Council, we have submitted a request for a ruling to the Ethics Subcommittee of the Indiana State Bar Association for an opinion regarding any potential violations of the Canons of Legal Ethics which might arise from our firm's continued involvement before various City agencies or the Common Council itself. We are attaching a copy of our request for your review and information. We would hope that the State Bar Association will expedite its consideration of our request and that we will receive a ruling shortly. We will, of course, be in contact with the Common Council immediately upon notification of the ruling.

In our previous letter, we suggested that Mr. Keller's employment be subject to several conditions and asked that the Common Council adopt a resolution approving these conditions as a part of the express terms of Mr. Keller's employment. We have attached a copy of that letter to our ruling request and, therefore, have indirectly inferred to the Bar Association that such a resolution has, in fact, been passed. To date, we do not believe that the Common Council has passed such a resolution. In order for the Council and our firm to rely on any favorable ruling which we might receive from the State Bar Association, we believe that such a resolution must, in fact, be passed as soon as possible. We, therefore, would ask that the Council promptly address this matter and adopt an appropriate resolution as soon as possible.

Mr. Ben A. Eisbart
October 5, 1983
Page Two

As previously stated, we very much appreciate the Council's recognition of Mr. Keller's talents and hope that we will shortly have a favorable ruling from the Bar Association regarding the ethical considerations underlying his employment. We are sure you agree that the most important aspect of the entire situation is that neither the Common Council, Mr. Keller, nor our law firm, in general, be subject to any allegations of unethical or improper conduct.

Sincerely,

SHOAFF, PARKER & KEEGAN

By



Joseph W. Kimmell

JWK/dks
Attachment

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LOUIS F. NIEZER
OF COUNSEL

October 5, 1983

Indiana State Bar Association
Legal Ethics Subcommittee
230 East Ohio Street
Indianapolis, Indiana 46204

Dear Subcommittee Members:

We are requesting your opinion as to the ethical considerations of a situation currently affecting our firm. We believe that the circumstances described in this request are not only of significant importance to our firm, but also representative of a continuing dilemma faced by attorneys, private law firms and various governmental boards, commissions and agencies in their respective efforts to represent private clientele and, at the same time, serve the public in governmental service.

This dilemma has recently been recognized by the Subcommittee in Opinion No. 3 of 1983:

"It must be said at the outset that whenever an attorney represents a public body on a part-time basis and also carries on a private practice that there is an obvious potential conflict of interest at all times as to all of his clients.

"It is also essential, however, that we have part-time city attorneys, county attorneys, deputy prosecutors, etc., in order to maintain our system in its present form. To attempt to place all attorneys who advised public bodies on a full-time status would create an undue burden upon the tax-paying citizens of the State of Indiana.

"Therefore, we feel that since there is an obvious potential conflict at all times when one holds himself out as a practitioner and also represents a public board or

commission, each and every case must be examined strictly on its own merits."

It is our hope that the ethical questions involved in such potential conflict situations can be resolved so as to allow private attorneys to continue to represent their clientele and, at the same time, allow governmental authorities to continue to rely on qualified part-time service from all members of the Bar.

A partner in our firm has been offered the position of Legal Advisor to the Common Council of the City of Fort Wayne. The position was created pursuant to I.C. 36-4-6-24, which provides, in pertinent part, as follows:

"(6) The legislative body may hire or contract with competent attorneys and legal research assistance on such terms as it considers appropriate.

(b) Employment of an attorney under this section does not affect the city department of law established under I.C. 36-4-9."

By express statute, the attorney for the Common Council is not a member of the City Department of Law. Therefore, the Council attorney does not perform the duties of the law department head described in I.C. 36-4-9-12, and, in particular, does not give legal advice to the officers, departments, boards, commissions and other agencies of the City. Rather, the Common Council attorney is hired by the Common Council to render such legal services for the Council as may be prescribed by his particular contract of employment, whether express or implied, rather than such duties as may be prescribed by statute.

We are advised by the Council that the prescribed contractual duties of the attorney for the Common Council of the City of Fort Wayne will involve, primarily, the rendering of advice and counsel in regard to the relationship between the Council, as the legislative branch of City Government, and the City administration, as the executive branch. In addition, it is anticipated that the attorney will render assistance in drafting City ordinances; will represent the Council in matters of litigation where it is involved as a body; and will serve as a parliamentarian during Council proceedings.

However, it must be recognized that in his position as attorney for the Common Council, the attorney may be called upon

Indiana State Bar Association
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Page Three

to advise the Common Council on various matters which affect private parties and which, in many instances, have originated before various departments or agencies of the City government. Such matters would include, but not be limited to, matters of zoning, tax abatement, economic development, industrial development and similar bonds, annexation and similar matters.

Numerous members of our law firm have practiced before various City departments. Many of the decisions or recommendations of these departments may ultimately be referred to the Common Council for review and approval or rejection. In addition, other matters may be considered initially by the Common Council without first being reviewed by another agency or department of the City. The nature of our present and potential clientele dictates that the members of the firm continue to be able to practice before such agencies or departments and, where necessary, before the Common Council.

In light of our concerns regarding the ethical considerations inherent in accepting the job of attorney to the Common Council, our firm conditioned its willingness to serve in this capacity pending a favorable response from your Subcommittee. A copy of our letter to the Common Council is attached hereto and made a part hereof. We would call your specific attention to the "condition" numbered 2 on Page Two of said letter. It is our hope that strict adherence to this procedure would avoid "even the appearance of impropriety" as called for in Canon 9.

Based upon the facts presented herein our specific questions are:

(a) Would it constitute a violation of the Canons of Legal Ethics, or the Disciplinary Rules adopted thereunder, for a partner in our law firm to serve in the position of the attorney for the Common Council and, at the same time, for other members of the law firm to continue to represent clients before the various City departments, boards or agencies?

(b) In the event the representation of such clients results in the respective matter being referred directly to the Common Council, or in the event of any other direct representation of clients before the Common Council, can the members of the firm continue to represent such clients directly before the Common Council if the partner serving as Common Council attorney disqualifies himself and withdraws from his representation of the Council as to that specific matter?

As previously stated, we believe that the issues raised in this request are of great importance to practicing

Indiana State Bar Association
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Page Four

attorneys and to municipal and other governmental agencies, in general, and hope that the Subcommittee will give our request substantial thought and research before rendering an opinion. Our firm is pleased that the Common Council of the City of Fort Wayne recognizes our partner's abilities in the area of municipal law and believes that his proposed appointment is an excellent choice. However, we also recognize the potential ethical questions which might be raised in connection with his service in that capacity and the continued representation by other members of the firm of clients before the City administrative boards, agencies or before the Common Council directly. We would request that you carefully consider the matters raised in this request and render an opinion to us as expeditiously as possible.

Thanking you for your attention and deliberation in this matter,

Sincerely,

SHOAF, PARKER & KEEGAN

By _____

Attachment

LAW OFFICES
SHOAF, PARKER & KEEGAN

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LOUIS F. NIEZER
OF COUNSEL

July 28, 1983

Common Council
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, Indiana 46802

Dear Council Members:

Our law firm greatly appreciates your nomination of our partner, David B. Keller, for the position of Attorney of the Common Council of the City of Fort Wayne. We know of his background and strong interest in municipal law and believe that he would make an excellent attorney for the Council.

As you can appreciate, a firm of our size has many long standing clients, and the potential for new clients, who have dealings with the City of Fort Wayne, through its various agencies, boards, and commissions, including the Common Council. By the acceptance of this engagement, the other members of our firm cannot limit their representation of other clients in their dealings with the City of Fort Wayne.

It is important to both the law firm and the Council to have a clear understanding as to the terms of Mr. Keller's appointment. Although it is of most importance to the law firm that we are not involved in situations of conflict, the appearance of impropriety, or other actions that might be construed to be in violation of the canons of ethics of our profession, it is of equal importance that the Council not be subjected to criticism as a result of our relationship and the ongoing representation, from time to time, by our firm of other clients in matters dealing with the City. Accordingly, we suggest that Mr. Keller's employment by the Council be subject to the following conditions:

Common Council
City of Fort Wayne
July 28, 1983
Page Two

1. It is understood that from time to time members of our firm will continue to represent clients on matters before the various City agencies, boards, and commissions, including the Common Council.
2. As to those matters which are directly before the Council, or as to which the Council may ultimately have final approval or authority (such as zoning matters, applications to the Economic Development Commission, etc.), Mr. Keller will notify the Council as to the representation by our firm of such client or clients at the commencement of our engagement in regard to such matters, and will withdraw from his representation of the Council as to each such matter.
3. The Council may, if it so elects, retain separate counsel as to such individual matter, and we would encourage the Council to do so.
4. We ask that in your engagement of Mr. Keller as Attorney for the Council, you adopt a resolution approving the terms of the engagement as herein set forth.
5. While we believe that the procedures contained herein satisfactorily address any ethical concerns that might otherwise arise, we are unaware of any instance in which the State Bar Association has been asked to directly address this issue. In an effort to confirm our belief, our firm will promptly prepare and submit a request for a ruling to the Ethics Committee of the State Bar Association for an opinion as to whether or not the terms of Mr. Keller's engagement as herein set forth and our firm's representation in the future of other clients before the City of Fort Wayne, through its various agencies, boards, and commissions, violates any ethical standards by which we are governed. Based upon information known to us, it appears that we will not be able to obtain an opinion on this matter for at least several months. In the event that we are unable to obtain a favorable opinion within a reasonable period of time, or if a favorable opinion is later modified or rescinded by such Committee, it is understood that Mr. Keller will be permitted to withdraw from his legal representation of the Council.

Common Council
City of Fort Wayne
July 28, 1983
Page Three

Once again, we very much appreciate your nomination of Mr. Keller for this position. Further, we hope that you will agree with us that our efforts to avoid potential conflicts of interest, or any appearance of impropriety, are in the mutual best interests of our firm and the City of Fort Wayne.

Very truly yours,

SHOAFF, PARKER & KEEGAN

By: _____
David B. Keller, Partner

By: _____
Thomas M. Shoaff, Partner

/sp

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LOUIS F. NIEZER
OF COUNSEL

August 29, 1983

Common Council
City of Fort Wayne
City-County Building
One Main Street
Fort Wayne, Indiana 46802

*Voted and
Passed by Council.
Send letter to
Law Firm
stating same.*

Dear Council Members:

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City of Fort Wayne
August 29, 1983
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2. As to those matters which are directly before the Council, or as to which the Council may ultimately have final approval or authority (such as zoning matters, applications to the Economic Development Commission, etc.), Mr. Keller will notify the Council as to the representation by our firm of such client or clients at the commencement of our engagement in regard to such matters, and will withdraw from his representation of the Council as to each such matter.

3. The Council may, if it so elects, retain separate counsel as to such individual matter, and we would encourage the Council to do so.

4. We ask that in your engagement of Mr. Keller as Attorney for the Council, you adopt a resolution approving the terms of the engagement as herein set forth.

5. While we believe that the procedures contained herein satisfactorily address any ethical concerns that might otherwise arise, we are unaware of any instance in which the State Bar Association has been asked to directly address this issue. In an effort to confirm our belief, our firm will promptly prepare and submit a request for a ruling to the Ethics Committee of the State Bar Association for an opinion as to whether or not the terms of Mr. Keller's engagement as herein set forth and our firm's representation in the future of other clients before the City of Fort Wayne, through its various agencies, boards, and commissions, violates any ethical standards by which we are governed. Based upon information known to us, it appears that we will not be able to obtain an opinion on this matter for at least several months. In the event that we are unable to obtain a favorable opinion within a reasonable period of time, or if a favorable opinion is later modified or rescinded by such Committee, it is understood that Mr. Keller will be permitted to withdraw from his legal representation of the Council.

Common Council
City of Fort Wayne
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Very truly yours,

SHOAFF, PARKER & KEEGAN

By: David B. Keller
David B. Keller, Partner

By: Thomas M. Shoaff
Thomas M. Shoaff, Partner

/sp